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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

L.W.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E072732

(Super.Ct.No. RIJ1800655)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Murphy,
Judge. Petition denied.

David Goldstein for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, and James E. Brown, Anna M. Marchand, and Julie Koons Jarvi, Deputy County Counsel, for Real Party in Interest.

The juvenile court removed M.C.W. (born in January 2008), M.W. (born in May 2015), and M.B. (born in July 2018) (collectively the minors); denied petitioner, L.W. (Mother), reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(5), (6), and (7);¹ and set the section 366.26 hearing. On petition for extraordinary writ, Mother contends the court's determination to deny Mother reunification services pursuant to section 361.5, subdivision (b)(5) was not supported by substantial evidence. The petition is denied.

I. FACTUAL AND PROCEDURAL HISTORY

On September 25, 2018, personnel from real party in interest, Riverside County Department of Public Social Services (Department), received an immediate response referral. Mother had brought M.B. (Minor) into the emergency room due to lethargy and thrush; however, the nurse noticed bruising on the infant's face and chest; hospital personnel conducted X-rays and CT scans of Minor. Minor had multiple broken ribs, a collapsed lung, and a break to her lower arm. It was reported her father, K.B. (Father), primarily cared for her during the day.²

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father is not a party to the appeal. Father was the father of Minor only. M.C.W. and M.W. each had separate fathers who are also not parties to this appeal.

Department personnel received a second referral the next day, reporting Minor had been transferred to Loma Linda University Medical Center “with acute and chronic rib fractures, fractures on both sides of her face, multiple body trauma, bruising all over, a spleen laceration, a left hemothorax, and a left radial fracture.” The social worker noted: “It was reported the mother believed the father had been physically abusing the infant since he cared for the infant while she was at work. The mother reportedly stated the father was physically and emotionally abusive towards her. It was reported there were other children in the home” Minor was to have surgery to wire her broken jaw. The doctor reported the injuries were at different stages of healing and did not appear accidental.

Mother said Father consumed beer daily, smoked marijuana on a regular basis, and would become loud and upset when he did not have alcohol. Father admitted to using alcohol and marijuana. Mother had a previous history with the Department in which substantiated allegations pertaining to M.C.W. and M.W. had been closed.

Department personnel filed a juvenile dependency petition alleging, as to Mother, that she knew or reasonably should have known Minor was being physically abused (b-2), neglected Minor’s medical needs (b-3), and knew or reasonably should have known Father was abusing controlled substances (b-5). On October 5, 2018, the juvenile court detained the minors.

In the jurisdictional and dispositional report filed on November 2, 2018, the social worker recommended that the court deny reunification services to Mother pursuant to

section 361.5, subdivision (b)(5), (6), and (7). Department personnel had found two additional prior unfounded general neglect allegations. When interviewed, M.C.W. said the allegations of abuse were “probably true.” M.C.W. became emotional regarding the allegations against Mother: “[M]y mother would always protect her babies and love them no matter what. She probably knew and that’s why she took [Minor] to the hospital that day.” M.C.W. said Mother “never failed to protect us and always succeeded in protecting us and taking care of us.”

The social worker noted: “The parents have offered no plausible explanation as to how this infant sustained such serious injuries. The medical reports definitively state that [Minor’s] injuries were non-accidental in nature and the child appears to have suffered from severe physical abuse at the hands of one and/or both parents, as they both shared they were the child’s only caregivers.”

In an addendum report filed on December 10, 2018, the social worker changed her recommendation to propose reunification services for Mother. Mother had visited with the older children twice. She said she was no longer in a relationship with Father. Mother was pregnant with Father’s child. Updated information reflected Minor had sustained 61 fractures.

The social worker noted: “During this reporting period, the mother has disclosed several incidents of domestic violence behaviors from the father While this does not excuse the mother’s failure to protect the child from harm by [Father], the mother did ultimately take the child to the hospital for treatment. Additionally, the mother has been

fully cooperative with both law enforcement and the Department and does not appear to have inflicted any injuries upon [Minor]” Mother said she now realized there were “warning signs” during her relationship with Father. Mother “voluntarily enrolled in all referred services and show[ed] an extreme willingness to educate herself”

M.C.W. said “things were going well in placement. She shared that she felt safe at her caregiver’s home, but missed her mother.” The social worker noted: “[T]he children are extremely attached to the mother and the removal from their mother’s care has been an extreme hardship, especially on the child, [M.C.W.], who has been referred for [therapy], due to her struggles.”

The January 4, 2019, addendum report reflected that M.C.W. “stated that she missed living with the mother.” Mother’s therapist said Mother was “‘very authentic in her emotions’ and seemed ‘completely dumbfounded that there was abuse’ . . . to” Minor. During the reporting period, Mother “continued to actively engage in services including participation in [a] substance abuse education course, participation in [a] parenting course[,] and participation in individual therapy sessions. Additionally, the mother has actively engaged in visitation with the children and is extremely appropriate during her time with the children, responding to their needs and engaging with each child at their appropriate developmental level” “The Department believes that it would be detrimental to both [older minors’] emotional health and well-being if the mother is not given the opportunity to participate in reunification services”

In an addendum report filed on February 7, 2019, the social worker reported that Mother had made progress toward alleviating the concerns which led to the Department's involvement. Father had been arrested and charged with torture and willful cruelty to a child with a great bodily injury enhancement. Mother had been charged with willful cruelty to a child. Mother denied having any contact with Father since the court hearing in November 2018. An investigator reported that Father and Mother had been in consistent communication during the month of January 2019 via text messages.

The addendum report filed on March 1, 2019, reflected Mother still insisted she had no contact with Father since November 2018. The social worker informed Mother that law enforcement informed Department personnel that Mother and Father were in consistent communication during January 2019. Mother responded they were not "big conversations." The social worker asked if they had rekindled their relationship as she had been informed by law enforcement that several of the messages included them exchanging messages of "I love you." Mother said Father would text her that but denied texting it back, which was contrary to law enforcement reports.

The social worker was now concerned about Mother's dishonesty and whether the situation posed a detriment to minors. In an addendum report filed on March 21, 2019, the social worker noted: "The Department continues to have concerns the mother may not be fully benefiting from the voluntary services she is enrolled in, as she has failed to ensure her service providers were fully aware of her continued involvement with [Father]."

On March 27, 2019, the court held the jurisdictional hearing and found the allegations pertaining to Mother and Father true. The court began the contested dispositional hearing, but continued it to March 28, 2019.³ At the continued, contested dispositional hearing, the social worker continued her testimony. She testified that she had received a transcript of Mother's and Father's "considerable number of text messages" from a district attorney investigator in which they tell each other they love one another, speak of Mother making food for Father, and of Father visiting Mother. The court entered the call logs and investigator's report into evidence. The court continued the dispositional hearing.

In the addendum report filed on April 12, 2019, the social worker reported that Minor had been released from the hospital on October 26, 2018. Mother's psychologist confirmed there was a history of domestic violence between Mother and Father. The psychologist was concerned that Mother "had such difficulty being open and honest with the psychological testing . . . [and] five objectively scored instruments were invalid due to her heightened degree of defensiveness or heightened degree to present herself favorably." The psychologist determined it was "inconclusive" as to whether Mother could benefit from services and have the ability to care for Minor.

³ Reporter's transcripts for the jurisdictional hearing and the initial portion of the dispositional hearing are not part of the record on appeal.

Mother's therapist reported that treatment was "just at the beginning" and they "have a ways to go." The therapist reported there was concern about Mother's contact with Father and that her presentation of the contact in therapy "lacked authenticity."

Mother had successfully completed a parenting program. Mother enrolled in services at Perris Valley Recovery Programs and her start date was April 16, 2019. Mother had tested negative for drugs five times during the reporting period.

On May 2, 2019, counsels for minors and the Department filed points and authorities in support of denying Mother reunification services. Mother filed points and authorities in support of granting her reunification services.

At the dispositional hearing on May 7, 2019, counsel for M.C.W. stated that M.C.W. said "her first choice would be to return to her mother." M.C.W. said she wanted to return to Mother "[b]ecause she is a part of my family, and we've been through a lot." M.C.W.'s second choice would be to stay in her current placement with her sisters. M.C.W.'s counsel argued the court should deny Mother reunification services.

Counsel for Minor argued the court should deny Mother reunification services. The court found that "had father not been arrested, [Mother] would have likely continued the relationship with him." The court opined this showed a lack of insight into the gravity of the situation: "There's grave concern that she would not be protective to these children should she reunify, and they be returned to her." The court found that Mother

knew or should have known of the abuse of Minor and denied Mother reunification services pursuant to section 361.5, subdivision (b)(5).

The court found that Mother was “complicit with the abuse of the child by the father” and that due to Mother’s “failure to act or omission, the child was continuously abused and that the child falls within the exception to granting reunification services pursuant to [section] 361.5[, subdivision] (b)(6).” The court found Father was “the offending parent of the severe physical abuse, physical harm to [Minor].” The court removed minors; denied Mother reunification services pursuant to section 361.5, subdivision (b)(5), (6), and (7); and set the section 366.26 hearing.

II. DISCUSSION

Mother contends the court’s denial of reunification services pursuant to section 361.5, subdivision (b)(5) was not supported by substantial evidence because of the bond between Mother and M.C.W. We disagree.

“Family reunification services play a critical role in dependency proceedings. [Citation.] Unless a specific statutory exception applies, the juvenile court must provide services designed to reunify the family within the statutory time period. [Citations.] The statutory exceptions to providing reunification services under section 361.5 have been referred to as reunification ‘bypass’ provisions. [Citations.] There is no general bypass provision; the court must find by clear and convincing evidence that one or more of the subparts enumerated in section 361.5, subdivision (b) apply before it may deny

reunification services to a parent. [Citations.]” (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 845-846.)

“Section 361.5, subdivision (b)(5) authorizes the court to deny reunification services to a parent when the child has been brought within the jurisdiction of the court under section 300, subdivision (e), because of ‘the conduct of that parent.’ [Citation.] Section 300, subdivision (e), applies when ‘[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.’” (*Tyrone W. v. Superior Court, supra*, 151 Cal.App.4th at p. 846.)

“When section 300, subdivision (e) applies to a parent, section 361.5, subdivision (c) prohibits the court from ordering reunification services for that parent unless ‘it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child’ In considering whether reunification services are likely to be successful, the court may consider ‘[t]he fact that a parent or guardian is no longer living with an individual who severely abused the child.’ [Citation.]” (*Tyrone W. v. Superior Court, supra*, 151 Cal.App.4th at p. 846.)

“[T]he court may provide reunification services if it finds, by clear and convincing evidence, that reunification—not reunification services—is in the dependent child’s best interests. [Citations.] A court called upon to determine whether reunification would be in the child’s best interest may consider a parent’s current efforts and fitness as well as

the parent’s history. [Citation.] Additional factors for the juvenile court to consider when determining whether a child’s best interest will be served by pursuing reunification include the gravity of the problem that led to the dependency; the strength of the relative bonds between the child and both the parent and caretakers; and the child’s need for stability and continuity, which is of paramount concern. [Citation.] The burden is on the parent to show that reunification would serve the best interests of the child. [Citations.]” (*In re S.B.* (2013) 222 Cal.App.4th 612, 622-623.)

“When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be an unwise use of governmental resources. [Citation.]” (*In re S.B., supra*, 222 Cal.App.4th at p. 622.) “We review an order denying reunification services under subdivision (b) of section 361.5 for substantial evidence. [Citation.] Under such circumstances, we do not make credibility determinations or reweigh the evidence. [Citation.] Rather, we ‘review the entire record in the light most favorable to the trial court’s findings to determine if there is substantial evidence in the record to support those findings.’ [Citation.] In doing so, we are mindful of the higher standard of proof required in the court below when reunification bypass is ordered.” (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121-1122.)

Here, Minor was born in January 2018; thus, she was under five years of age when she suffered the abuse. The court found “[t]here’s no question here in my view that [Minor] suffered severe physical harm.” The evidence adduced below supports this

conclusion. Minor was admitted to the hospital with multiple broken ribs, a collapsed lung, and a broken arm. She was transferred to Loma Linda University Medical Center “with acute and chronic rib fractures, fractures on both sides of her face, multiple body trauma, bruising all over, a spleen laceration, a left hemothorax, and a left radial fracture.” Minor had to undergo surgery to wire her broken jaw. She was found to have had 61 fractures throughout her body in various stages of healing. Minor spent approximately a month in the hospital.

The court found “[M]other was complicit with the abuse of the child by the father and was not ignorant of it.” The evidence supports the court’s conclusion. Mother brought Minor into the hospital for relatively minor complaints of lethargy and thrush despite what was apparently visible bruising of the face and chest. Of the injuries, one doctor reported: ““You could see it on her [Minor’s] face, chest, [and] forearm (left side). You could see it all over.”” As noted above, Minor suffered from severe and extensive injuries. Mother reported that Father was the primary caretaker for Minor while Mother worked and that no one else had provided care for Minor. Mother had reported early on she “believed the father had been physically abusing the infant since he cared for the infant while she was at work.” Thus, the evidence supported the juvenile court’s finding that Minor had suffered severe physical abuse by Father and that Mother knew or reasonably should have known that Father was physically abusing Minor.

Mother’s reunification services as to M.C.W. were not bypassed pursuant to section 361.5, subdivision (b)(5) because the court made no finding that M.C.W. had

sustained severe physical abuse. Instead, Mother's reunification services as to M.C.W. had been bypassed pursuant to section 361.5, subdivision (b)(6) and (7), respectively, as the sibling of someone who had been adjudicated as a dependent as a result of severe physical abuse and as a sibling of someone as to whom Mother was not receiving reunification services. Thus, the only way Mother could receive reunification services as to M.C.W. was to prove that reunification was in the best interest of M.C.W.⁴

Mother failed to sustain her burden of showing that despite the aforementioned findings, reunification was in the best interest of any of the minors. M.C.W. repeatedly expressed love for and a desire to reunite with Mother. The social worker had noted that "the children are extremely attached to the mother and the removal from their mother's care has been an extreme hardship, especially on the child, [M.C.W], who has been referred for [therapy], due to her struggles." At one point during the proceedings, the social worker even noted she believed "that it would be detrimental to both [older minors'] emotional health and well-being if the mother is not given the opportunity to participate in reunification services"

Nonetheless, despite Mother's bond with her eldest daughter, Mother failed to protect her youngest daughter from the extensive and severe physical abuse the court found Father had inflicted upon her. Even after being confronted with evidence that

⁴ It is unclear from Mother's brief whether she is arguing the court should have ordered reunification services for Mother as to all the minors or just M.C.W. As the Department notes, Mother does not argue the court erred in bypassing reunification services pursuant to section 361.5, subdivision (b)(6) or (7).

Father had inflicted such abuse, Mother rekindled her relationship with Father while denying that she had even seen Father. When confronted with evidence of her telephonic communications with Father, Mother lied about both the frequency and content of the discussions; Mother reported they were not ““big conversations”” and that she had never told Father she loved him despite transcripts which directly contradict Mother’s assertions. In fact, throughout a considerable number of phone calls and text messages, Mother had repeatedly told Father she loved him, made him food, and had him over to visit.

Mother’s disingenuity lead to the invalidation of five of the seven psychological instruments used by the psychologist to evaluate Mother. This lead the psychologist to determine it was ““inconclusive”” as to whether Mother could benefit from services. Mother’s therapist noted that treatment was ““just at the beginning”” and they ““have a ways to go.”” The therapist noted Mother’s response to being confronted with her continued contact with Father ““lacked authenticity.””

The social worker noted that while Mother ““previously appeared to display insight as to the maladaptive qualities of her relationship with [Father], she chose to continue to engage him in communication, indicating that she did not have insight as to the risk [Father] pose[d] to both herself and her children.”” Mother responded that since Father was now incarcerated, they had not been in communication; the social worker noted that it appeared Father’s incarceration was the only reason for the cessation of their communication, rather than a conscious decision on Mother’s part. The social worker

was concerned that Mother's service providers were not fully aware of Mother's continued involvement with Father. Thus, substantial evidence supported a determination that Mother either lacked insight as to the harm caused by Father or disregarded it entirely, posing a potential risk not only to Minor, but her sisters as well. Therefore, the evidence supports the court's decision to bypass reunification services for Mother as to Minor pursuant to section 361.5, subdivision (b)(5).

III. DISPOSITION

The petition is denied.

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McKINSTER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.